Supreme Court, U. S.
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IN THE

Supreme Court of the United States

October Term, 1942.

No. 251.

KATZ UNDERWEAR COMPANY,
Plaintiff-Appellant,

AGAINST

THE UNITED STATES OF AMERICA,
Respondent.

Reply Brief in Support of Petition for Writ of Certiorari.

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Katz' testimony was *not* necessary to explain the admitted increase in selling prices.

The report by John J. Devers, Chief of Processing Tax Division (App. 69a-71a), which respondent submitted to prove these selling price increases also contained the unrebutted evidence of increased costs of production to the plaintiff. In addition, in a letter from Devers to the Collector of Internal Revenue, Scranton, Pa. (App. 89a), Revenue Agent Devers admits and verifies in the last two paragraphs (App. 91a) that the increase in selling prices was due to losses suffered in the previous period (before August 1, 1933). In other words, Devers confirmed that increased costs of production (incurred before the AAA taxes were announced) were responsible for the increased selling prices. Thus, the AAA taxes had noth-

ing to do with sales price increases and there was no shifting of the tax burden. (See *C. B. Cones & Son Mfg. Co.* v. *U. S.*, 123 Fed. [2d] 530 [C. C. A. 7th] and similar cases.) The doctrine in the case of *Honorbilt Products, Inc.* v. *Commissioner*, 119 Fed. (2d) 797 (C. C. A. 3rd) is not applicable here since it relates only to the narrow field where the sales price increases are unaccounted for or unexplained. But here, the uncontroverted evidence amply explains that the sales price increases (a) took place before the AAA taxes were promulgated and (b) that they were caused by factors other than the tax (increased costs of production incurred before the tax was imposed).

CONCLUSION.

The brief in opposition is insufficient. The petition for writ of certiorari should be granted.

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